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Hearing Date and Time: January 18, 2019 at 10:00 a.m.  
Objection Deadline: January 17, 2019 at 4:00 p.m.

and

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*Co-Counsel for Jackson EMC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**SEARS HOLDINGS CORPORATION, et al.,**

**Debtors.**

)  
) **Chapter 11**  
)  
) **Case No. 18-23538 (RDD)**  
)  
) **(Jointly Administered)**  
)

**JOINDER OF JACKSON EMC TO THE MOTION OF CERTAIN  
UTILITY COMPANIES TO DETERMINE  
ADEQUATE ASSURANCE OF PAYMENT PURSUANT TO  
SECTION 366(c) OF THE BANKRUPTCY CODE [Docket No. 1395]**

Jackson EMC, by counsel, for their Joinder to the *Motion Of Certain Utility Companies*

*To Determine Adequate Assurance of Payment Pursuant to Section 366(c) of the Bankruptcy*

Code [Docket No. 1395] (“**Motion**”), states as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334(b) and 11 U.S.C. § 366(c).
2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).
3. Venue of this Motion is proper in this district pursuant to 28 U.S.C. § 1409.

**Procedural Facts**

4. Jackson EMC adopts and incorporates by reference the Procedural Facts set forth in the Motion.

**Additional Adequate Assurance Request From Jackson EMC**

5. Although Jackson EMC believes the Utility Order was entered in violation of their due process rights and the provisions and requirements of Section 366 of the Bankruptcy Code, Jackson EMC elected to proceed with the Additional Adequate Procedures in Exhibit 2 to the Utility Motion. Accordingly, Jackson EMC, by counsel, sent Debtors’ counsel and the applicable notice parties an Additional Adequate Request in a letter dated October 24, 2018, which, without the attachments, is attached to this Motion as **Exhibit 1** (the “**Adequate Assurance Letter**”).

6. In the Adequate Assurance Letter, Jackson EMC requested the Debtors to provide the following two month cash deposits to Jackson EMC:

- A. \$43,000 for the 580 Raco Pkwy, Jefferson, Georgia service address; and
- B. \$1,800 for the 1650 International Ct., Suite 200, Gwinnett Park, Norcross, Georgia service address.

7. Despite an exchange of communications, Jackson EMC and the Debtors were unable to resolve their issues.

8. In addition to the two month deposit request set forth in the Adequate Assurance Letter, Jackson EMC requests the following terms and conditions regarding adequate assurance of payment:

A. The Debtors agree to pay all post-petition charges of Jackson EMC by the applicable due date of the invoice, which is a due date established in accordance with applicable state laws and tariffs.

B. If the Debtors no longer require service at an account for any reason, including the Debtors' termination of services, the Effective Date of a confirmed plan of reorganization or dismissal of the Debtors' chapter 11 cases, or the closing of sale of assets, the Debtors shall contact Jackson EMC and request that the account be closed.

C. The Debtors shall provide Jackson EMC with advance written notice as to when they will no longer require utility goods/services from Jackson EMC that shall be received by Jackson EMC at least three (3) business days prior to the date that the Debtors no longer require utility goods/services from Jackson EMC.

D. Once the Debtors close an account and pays all post-petition charges for that account, Jackson EMC shall promptly refund to the Debtors the deposit on that account.

#### **Debtors' Post-Petition Financing**

9. Jackson EMC adopts and incorporates by reference the Debtors' Post-Petition Financing facts set forth in the Motion.

10. On December 28, 2018, the Court entered an Order [Docket No. 1436] approving the *Debtors Supplemental Motion for Authority to (I) Obtain Junior Postpetition Financing and (II) Scheduling Final Hearing* [Docket No. 872] (the "Junior DIP Financing Motion").

#### **Facts Regarding Jackson EMC**

11. Under Jackson EMC's billing cycle, the Debtors receive approximately one month of utility goods and/or services before Jackson EMC issues a bill for such charges.

Once a bill is issued, the Debtors have 15 days to pay the applicable bill. If the Debtors fail to timely pay the bill, a past due notice is issued and a late fee may be subsequently imposed on the account. If the Debtors fail to pay the bill after the issuance of the past due notice, Jackson EMC issues a notice that informs the Debtors that they must cure the arrearage within 7 days or service will be disconnected. Accordingly, under the Jackson EMC's billing cycle, the Debtors could receive at least three months of unpaid charges before Jackson EMC could cease the supply of goods and/or services for a post-petition payment default.

12. The Jackson EMC web site link to its service rules is:

[https://www.jacksonemc.com/sites/default/files/servicerulesreg\\_011518.pdf](https://www.jacksonemc.com/sites/default/files/servicerulesreg_011518.pdf).

#### **Discussion**

**A. THE COURT SHOULD ORDER THE DEBTORS TO PROVIDE THE ADEQUATE ASSURANCE OF PAYMENT REQUESTED HEREIN PURSUANT TO SECTION 366(c) OF THE BANKRUPTCY CODE.**

Jackson EMC adopts and incorporates by reference the legal and factual arguments set forth in Section A. of the Motion.

**B. THE COURT SHOULD ORDER THE DEBTORS TO PROVIDE THE ADEQUATE ASSURANCE OF PAYMENT REQUESTED BY THE UTILITIES PURSUANT TO SECTION 366 OF THE BANKRUPTCY CODE.**

Jackson EMC adopts and incorporates by reference the legal and factual arguments set forth in Section B. of the Motion.

WHEREFORE, Jackson EMC respectfully requests that this Court enter an order:

A. Awarding Jackson EMC the post-petition adequate assurance of payment pursuant to Section 366 in the amount and form satisfactory to the Jackson EMC, which are the two month cash deposits set forth in paragraph 6 above; and

B. Providing such other and further relief as the Court deems just and appropriate.

Dated: Garden City, New York  
January 10, 2019

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

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